



W.A. Nos. 1430, 1104, 1427, 1423, 1428, 1432, 1178 & 1179 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2023

Pronounced on : 25.07.2023

CORAM :

THE HON'BLE MR. SANJAY V. GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A. Nos. 1430, 1104, 1427, 1423, 1428, 1432, 1178  
and 1179 of 2023

and

C.M.P. Nos. 11173, 13924, 13932, 13918, 13892, 13915, 11974  
and 11978 of 2023

**W.A. No. 1430 of 2023:-**

1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.

2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083.

... Appellant/Respondents

2&3

-VS-

1. Nikhilesh Gowthamprabu  
Represented by his Natural  
Guardian and father Mr. Gowthamprabu  
Residing at No.16, Suresh Nagar  
Valasarawakkam, Chennai – 600 087.



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2. The Regional Officer, CBSE  
Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu – 600 040. ...2<sup>nd</sup> Respondents/1<sup>st</sup>  
Respondent

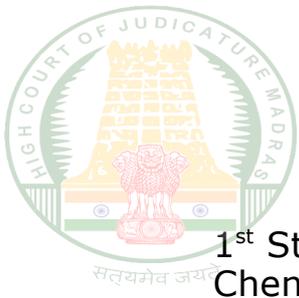
Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 12977 of 2023 by the learned Single Judge.

**W.A. No. 1104 of 2023:-**

1. Kendriya Vidyalaya Sangathan, (HQ)  
Rep. by its Assistant Commissioner (Acad)  
No.18, Industrial Area  
Shaheed Jeet Singh Marg  
New Delhi – 110016.
2. Kendriya Vidyalaya  
Rep by the Principal  
GPRA Campus, Jawharlal Nehru Road  
Anna Nagar West, Thirumangalam  
Chennai – 600 040. ... Appellant/Respondents  
3&4

-VS-

1. P.Nithyasri  
Represented by her Mother J.Ambika  
W-8, 2<sup>nd</sup> Street, West Poompohar Nagar  
Kolathur, Chennai – 600 099.
2. E.Bharathi Chellamma  
Rep. by her Father N.R.Eswar  
Door No. 1061, Thendral Colony



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1<sup>st</sup> Street, Anna Nagar West  
Chennai.

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3. H.Suhaila Fathima  
Rep. by her Father H.Hussain Basha  
No.91/2, Central Revenue Quarters  
15<sup>th</sup> Main Road, Anna Nagar  
Chennai – 600040.
4. D.Vigneshwaran  
Rep. by his Mother D.Nirmala Devi  
90-B, Parvathy Nagar  
Shanthi Niketan Colony  
Madambakkam, Chennai-600126.
5. B.Geetan Kumari  
Rep by his Father Bhogender Bhandari  
Plot No.27, Sri Murugan Nagar  
90, Ayathur Village, Veppampattu  
Thiruvalluvar – 602024.
6. M.Aravind  
Rep. by his Mother Rohini K  
No.32, P.E.Koil, West Mada Street  
Ayanavaram, Chennai – 600 023.
7. S.Srija  
Rep. by her Mother S.Bhuvanewari  
537/4, ICF South Colony  
Chennai – 600038.
8. U.Dharshini Priya  
Rep. by her Father Udhaya Sankar  
E51/A, Nethaji Circle, BSNL Staff Quarters  
Anna Nagar, Chennai – 600040.
9. T.Preethika  
Rep. by her Father N.Thirumalaiselvam  
17A, Kasthuribai Street  
Gandhi Nagar, Chennai – 600082.
- 10.S.Mathesh



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Rep by His Father D.Selvam  
12, Bajanai Koil 2<sup>nd</sup> Street  
Villivakkam, Chennai – 600049.

11. Sanjay S Nair

Rep. by his Father Santhosh Kumar K  
348/P, 12<sup>th</sup> Street  
PTR Colony, Ayanavaram  
Chennai – 600023.

12. A.Vimal Chelvan

Rep. by His Father D.Anni Chelvan  
No.1246, 1<sup>st</sup> Floor, 13<sup>th</sup> Main Road  
Anna Nagar West, Chennai – 600 040.

... Respondents 1 to

12

/Petitioners 1 to 12

13. The Secretary

Dept. of School Education & Literacy  
124-C, Shastri Bhawan  
New Delhi.

14. The Regional Officer

Central Board of Secondary Education  
New No.3, Old No.1630 A, 'J' Block  
16<sup>th</sup> Main Road  
Anna Nagar, Chennai – 600040.

... Respondents 13&14/Respondents 1&2

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 11590 of 2023 by the learned Single Judge.

**W.A. No. 1427 of 2023:-**

1. The Deputy Commissioner

Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.

2. The Principal



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Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083.

... Appellant/Respondents

2&3

-VS-

1. Swetha Karthikeyan  
Represented by his Natural  
Guardian and father Mr. Karthikeyan  
Residing at No.5, Kala Flats  
Kannappar Road, 80<sup>th</sup> Street  
Ahok Nagar, Chennai – 600 083.

... 1<sup>st</sup> Respondent /Petitioner

2. The Regional Officer, CBSE  
Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu – 600 040.

...2<sup>nd</sup> Respondents/1<sup>st</sup>

Respondent

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 12979 of 2023 by the learned Single Judge.

**W.A. No. 1423 of 2023:-**

1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.

2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083.

... Appellant/Respondents

2&3

-VS-

1. Dhayanithi Jayasankar  
Represented by his Natural  
Guardian and father Mr. K.Jayasankar



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Residing at No.H33-1, Manthoppu Colony  
48<sup>th</sup> Street, Ashok Nagar,  
Chennai - 600 083.

... 1<sup>st</sup> Respondent /Petitioner

2. The Regional Officer, CBSE  
Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu - 600 040.

...2<sup>nd</sup> Respondents/1<sup>st</sup>

Respondent

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 12971 of 2023 by the learned Single Judge.

**W.A. No. 1428 of 2023:-**

1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai - 600036.

2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai - 600083.

... Appellant/Respondents

2&3

-VS-

1. Naveen Sakthivel  
Represented by his Natural  
Guardian and father Mr. Sakthivel  
Residing at No.AP-90, 1<sup>st</sup> Sector  
1<sup>st</sup> Street, K.K.Nagar,  
Chennai - 600 078.

... 1<sup>st</sup> Respondent /Petitioner

2. The Regional Officer, CBSE



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Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu – 600 040.

...2<sup>nd</sup> Respondents/1<sup>st</sup>

Respondent

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 12981 of 2023 by the learned Single Judge.

**W.A. No. 1432 of 2023:-**

1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.

2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083.

... Appellant/Respondents

2&3

-VS-

1. Santhosh Senthilkumar  
Represented by his Natural  
Guardian and Mother Tmt. Tamilselvi  
Residing at No.65/2, Kannikapuram  
1<sup>st</sup> Street, K.K.Nagar,  
Chennai - 600 078.

... 1<sup>st</sup> Respondent

/Petitioner

2. The Regional Officer, CBSE  
Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu – 600 040.

...2<sup>nd</sup> Respondents/1<sup>st</sup>

Respondent



W.A. Nos. 1430, 1104, 1427, 1423, 1428, 1432, 1178 & 1179 of 2023

**WEB COPY:-** Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 12981 of 2023 by the learned Single Judge.

**W.A. No. 1178 of 2023:-**

1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.

2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083.

... Appellant/Respondents

2&3

-VS-

1. Sivadeepak Kannan  
Represented by his Natural  
Guardian and Mother Mrs. K.Gomathi  
Residing at No.1, 48<sup>th</sup> Street  
8<sup>th</sup> Avenue, Ashok Nagar  
Chennai - 600 083.

... 1<sup>st</sup> Respondent

/Petitioner

2. The Regional Officer, CBSE  
Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu – 600 040.

...2<sup>nd</sup> Respondents/1<sup>st</sup>

Respondent

Prayer:- Appeal under Clause 15 of the Letters Patent against the



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order dated 27.04.2023 passed in W.P. No. 13481 of 2023 by the learned Single Judge.

**W.A. No. 1179 of 2023:-**

1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.
2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083. ... Appellant/Respondents  
2&3

-VS-

1. Sathana Saravanan  
Represented by his Natural  
Guardian and Mother Tmt. Sasikala  
Residing at No.5/B  
Poomagal 4<sup>th</sup> Street  
Ekkathuthangal, Chennai - 600 032.  
... 1<sup>st</sup> Respondent /Petitioner
2. The Regional Officer, CBSE  
Old No. 1630 A, 6<sup>th</sup> Avenue  
3, 6<sup>th</sup> St., Near Sri Devi Hospital  
Bharathi Colony, Bharathi Nagar  
Anna Nagar, Chennai  
Tamil Nadu – 600 040. ...2<sup>nd</sup> Respondents/1<sup>st</sup>  
Respondent

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 27.04.2023 passed in W.P. No. 12985 of 2023 by the learned Single Judge.



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- For Appellants : Mr. M.Vaidhiyanathan  
(In all WAs)
- For R1 : Mr. K.Raja  
(in W.A.Nos.1178, 1179 &  
1423/2023)
- For R2 : Mr. G.Nagarajan  
(in W.A.Nos.1430, 1104,  
1427,  
1428, 1432, 1178 &  
1179/2023)
- For RR 1 to 12 : Mr. K.Elango  
(in W.A.No.1104/2023)
- For R14 : Mr. G.Nagarajan  
(in W.A.No.1104/2023)



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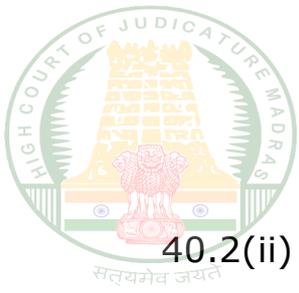
COMMON JUDGMENT

WEB COPY (Judgment of the Court was made by P.D.AUDIKEVALU, J.)

These intra-Court appeals invoking Clause 15 of the Letters Patent, 1865, arise out of the common order dated 27.04.2023 in W.P. Nos. 13481, 11590, 12971, 12977, 12979, 12981, 12982 and 12985 of 2023 passed by the Learned Single Judge of this Court.

2. The parties are hereinafter referred as per their description in the said Writ Petitions for the sake of clarity and convenience.

3. The Petitioners had joined as students in Class XI for the academic year 2022-2023 in the schools at Ashok Nagar and Anna Nagar in Chennai City of Kendriya Vidyalaya Sangathan, which are governed by the Central Board Secondary Education (hereinafter referred to as 'CBSE' for short) pattern of School Education. Clause 7.5 of Bye-Laws of CBSE stipulates that admission to Class XII in a school shall be open to such a student, who has completed a regular course of study for Class XI and has passed Class XI examination from an institution affiliated to CBSE. In Clause



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40.2(ii) of Examination Bye-Laws of CBSE, as amended in the notification dated 29.11.2016, it has been prescribed as follows:-

"A candidate failing in one of the five subjects of external examination at Class XI shall be placed in Compartment in that subject provided he/she qualifies in all the subjects of internal assessment."

Kendriya Vidyalaya Sangathan had by letter in F.110362/02/2017-18/KVS(Acad)/CBSE Result dated 05.06.2018 conveyed the decision taken in the 109<sup>th</sup> meeting of its Board of Governors held on 06.03.2018 amending Article 105 and 106 of the Examination and Promotion Rules of the Education Code, in which it has been provided as follows:-

"Class XI

1. The qualifying marks in each subject of external examination shall be 33%. However, in a subject involving practical/project work, a candidate must obtain 33% marks in the practical/project separately in addition to 33% marks in aggregate, in order to qualify in that subject.



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2. In order to be declared as having passed the Class XI Examination, a candidate shall obtain 33% marks in all the subjects (without additional subject). The pass marks in each subject of examination shall be 33%. In case of subject involving practical/project work a candidate must obtain 33% in practical/project separately in addition to 33% marks in aggregate in order to qualify in that subject.
3. A candidate failing in one of the five subjects of examination at Class XI shall be placed in Compartment in that subject provided he/she qualifies in all the subjects of internal assessment (As per CBSE Examination Byelaws Notification dated 29.11.2016 regarding Additions/ Amendments in Examination Bye-Laws, para 40.2)
4. A candidate has to appear compulsorily in session ending examination for promotion to class XII.
5. A total of 10 grace marks spread all over the subjects with a maximum of 04 marks in one subject, can be given to a students who participated



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in the KVS National Meet /SGFI Meet in that Academic Year. These marks can be given in the column of final weighted score to the extent needed to promote the student and not to bring him/her in the zone of supplementary case.”

It has been communicated by Kendriya Vidyalaya Sangathan in proceedings in F.No. 11029/2022/KVS(HQ)/Acad/dated 16.09.2022 relating to assessment and evaluation practices for Classes III to VIII and IX and XI in the academic year 2022-2023 as follows:-

“For Senior Secondary Classes: (XI – XII)

- (1) CBSE Circular No. CBSE/dir(ACAD)/2022/ dated 20.05.2022, Circular No.ACAD-57/2022 on Assessment and Evaluation Practices of the Board for session 2022-2023 need to be strictly followed.
- (2) The qualifying marks for class XI students in each subject for promotion shall be 33% in each subject. It is to further clarify that in a subject where practical components are involved; separate pass (33%) is required in Theory component and Practical component respectively. This implies that students



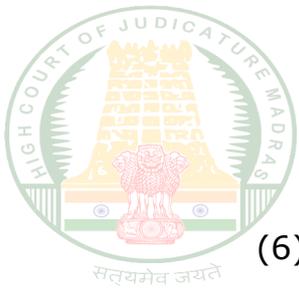
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need to score 33% out of 70 (Theory) and 33% out of 30 marks in Practical separately. Similarly, Students need to secure separate pass (33%) Theory component (33% out of 80) and Internal Assessment (33% out of 20) for subjects having Internal Assessment. The overall 33% marks are also required for the promotion of the students in the next higher class.

- (3) Students failing in one of the five subjects in Class XI will be placed under Compartment in that subject and students failing in more than one subject will be treated as '**Essential Repeat**'.
- (4) Supplementary Examination in the pattern of Annual Examination for classes IX and XI will be conducted 3 weeks after declaration of results (May be in the **Third week of April 2023**) by the Regional Office concerned.
- (5) Students needs to secure 33% in the supplementary examination (Theory only) to get qualify for the next higher class.



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- (6) Wherever applicable, for the promotion or students of IX and XI, the participation in sports at different levels, as per KVS guidelines, need to be considered and the prescribed weightage as per F.No.110355/01/2019-20/KVS(HQ)/Sports/ BOG/480 dated 21.05.2020 should be added to promote the student in the respective subject. This provision should not be used to bring the student to the zone of Compartment.”

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In the criteria for evaluation / promotion for Class XI, the Kendriya Vidyalaya Anna Nagar, Chennai – 600040 has stated that as per KVS Guidelines, the weightage for each exam for promotion in Class XI is as follows:-

“

1.	Periodic Test 1	Maximum marks = 40	Weightage = 10
2.	Cumulative Test	Maximum marks = 80/70	Weightage = 30
3.	Periodic Test 2	Maximum marks = 40	Weightage = 10
4.	Session Ending Exam	Maximum marks = 80/70	Weightage = 50

Total marks in Theory = 10+30+10+50=100

The above mark will be converted to 80 for Non-Practical Subjects and 70 for Practical Subjects. A student should secure minimum 33% in theory in each subject.



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Internal marks for 20 marks for Non-Practical subjects

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(Eng, Hin, Maths, Eco, Acc, B.St) and 30 marks for

Practical Subjects are conducted as per CBSE guidelines.

**Student must score a minimum of 33% in Practical and Theory separately in all subjects to be promoted to class 12.**

**If a student fails to secure 33% in any ONE subject only, then he/she is eligible for Supplementary Exam.**

**If a Student is unable to secure 33% in two or more subjects, he/she will be detained (failed) in Class 11."**

[emphasis supplied]

On a combined reading of those binding regulations, which have been placed on record, the inevitable position that emerges is as follows:-

- (i) Students would have to pass in all subjects at Class XI in order to be promoted to Class XII, failing which they would have to repeat the course in Class XI.
- (ii) If a candidate passes in all subjects except in one, supplementary examination would be conducted for such candidates within three weeks from the date of



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declaration of results so that if he passes that subject in that supplementary examination, he would not be required to be detained in Class XI and could be promoted to Class XII.

The Petitioners in these Writ Petitions, admittedly, have not passed in more than one subject and have been detained in Class XI. In that backdrop, they had filed these Writ Petitions seeking direction to the Kendriya Vidyalaya Sangathan to forthwith constitute a Promotional Committee to deal with the peculiar situation of *en masse* students failed in Class XI in the academic year 2022-2023 so as to conduct compartment/supplementary examination to the Petitioners, who had failed in that year, for promoting them to get admitted in Class XII in the respective schools.

4. The Learned Judge by order dated 27.04.2023 disposed Writ Petitions holding as follows:-

"11. Even a bare perusal of Clause 3 of the Assessment and Evaluation Practices reveals that students failing in one



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of the five subjects in Class XI will be placed under

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'Compartment' and the students failing in more than one subject will be treated as 'Essential Repeat'. Barring the above, the clause is silent on the movement of the student to the next higher standard. The said clause does not speak about the promotion of the student to the next higher class, even on the failure of the student be it in one subject or in multiple subjects. It merely differentiates the students on the basis of the number of subjects in which the student has failed. The coinage of 'compartment' and 'essential repeat' therefore merely differentiates the students based on the failures in the subjects, be it solitary or multiple and it does not speak about the movement to the next higher standard. It is to be pointed out that failure should not be the basis to create a class within itself, be it failure in one subject or multiple subjects, which is an inequality and is a direct affront on Article 14 of the Constitution. When clause 3 does not speak of promotion to the next higher class, viz., Class XII, but only differentiates the students on the basis of the number of subjects in which they have failed, ensuring equality as



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adumbrated in the Constitution, this Court feels that the interests of all the students should be taken into consideration for the purpose of their movement to the next higher standard, viz., XII Standard without reference to the number of subjects in which a student has failed, as it is the life of the students which is at stake.

12. In such view of the matter, Article 14 warrants an equal treatment to be meted out to all the students, irrespective of the number of subjects in which they have failed. Therefore, as a one time measure, this Court directs the Kendriya Vidyalaya Sangathan to conduct supplementary examination for all the students, throughout the State of Tamil Nadu, who failed in more than one subject, to enable them to come out successful and get promoted to the next higher standard of XII for pursuing their studies. Kendriya Vidyalaya Sangathan is further directed to conduct the supplementary examination, within a period of three weeks from the date of receipt of a copy of this order."

It was also clarified therein that the said order passed was a one time measure and it shall not be quoted as a precedent in future



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cases. Aggrieved by the said order, Kendriya Vidyalaya Sangathan and its schools, who were the Respondents, have preferred these appeals.

5. Before proceeding further, reference must be made at once to the scope of judicial review on interference by the Constitutional Courts on the rules relating to evaluation of marks in examination conducted in educational institutions as held by the Hon'ble Supreme Court of India in ***Maharashtra State Board of Secondary and Higher Secondary Education -vs- Paritosh Bhupeshkumar Sheth*** [(1984) 4 SCC 27], in the following words:-

"16. .... The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent



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policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. ....

....

29. .... As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of



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this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. ....”

The Hon'ble Supreme Court of India in **University Grants Commission -vs- Neha Anil Bobde** [(2013) 10 SCC 518], has restated the legal position on intervention by Courts in academic matters, as extracted below:-

“31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in **University of Mysore -vs- C.D.Govinda Rao** (AIR 1965 SC 491), **Tariq Islam -vs- Aligarh Muslim University** [(2001) 8 SCC 546] and **Rajbir Singh Dalal -vs- Chaudhary**



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**Devi Lal University** [(2008) 9 SCC 284], has taken the

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view that the Court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are.”

Tested on the anvil of the said principles, it will not be possible for this Court to substitute the system of evaluation adopted by the educational authorities merely because some other better mechanism is possible or that it causes hardship to a substantial number of students. The extracted rules make it abundantly clear that pass in all subjects in Class XI is mandatory for promotion of a student to Class XII and it is only by way of concession that a student, who has failed in one subject, is permitted to appear in a supplementary examination in that subject within three weeks from the declaration of results, so that if he passes in that subject also, he could be promoted to Class XII without repeating Class XI. In such circumstances, it would be absurd and fallacious to treat the refusal to extend that benefit to the students, who have failed



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in more than one subject, as discriminatory and violative of Article

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14 of the Constitution, which would unwittingly result in transgression of the indefeasible right conferred on an institution to strictly adhere to the prescribed norms for maintenance of proper standards of education. The concession of restricting the conduct of supplementary examination to those students who have failed only in one subject, cannot, by any stretch of imagination, create any right of parity in favour of those who have failed in more than one subject to claim that they should also be extended the same benefit for promotion to Class XII in this case. The Writ Court has obviously proceeded on the palpably wrong assumption as if there is nothing in the relevant rules about the movement of students to the next higher class if they had failed in one or more subjects, and the relief granted to the Petitioners in these cases, and extended to all other similarly placed, cannot be approved, particularly when it had not even been actually sought by them.

6. Learned Counsel for the Petitioners vehemently contended that there had been an earlier practice of providing compartment



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examination to students of Class XI, who had failed upto two subjects, and the said benefit had been suddenly withdrawn during the academic year 2022-2023 without sufficient notice to the Petitioners. In response, Learned Counsel for the Respondents points out that the rule of CBSE restricting compartment examination only for those who have failed in one subject has been in force since from the academic year 2018-2019 onwards and regular meetings of the parents with teachers has been held including on 15.10.2022 and 04.02.2023, when it was unambiguously conveyed that the compartment examination would be available only for those who failed in one subject and in respect of those students, who have failed in two or more subjects they would have to repeat the Class XI, which includes internal assessment.

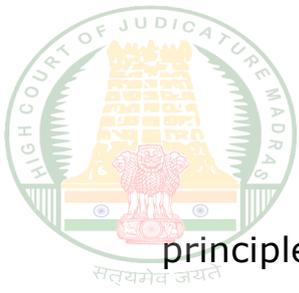
7. It is next canvassed by Learned Counsel for the Petitioners that when compartment examination has been prescribed for those students in Class IX, who have failed upto two subjects, it would be unfair and invidious in not extending the same benefit to



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those in Class XI also. We are unable to countenance the said submission, as the course of study at secondary level upto Class IX with five compulsory subjects is distinct from that in Classes XI and XII, which have different specialized subjects at senior secondary level. In any event, it is within the absolute province of the educational authorities to prescribe the manner of assessment and it would not be permissible for the Constitutional Courts to tread upon the same.

8. Learned Counsel for the Petitioners has brought to notice that in the order dated 28.04.2018 made in W.P. No. 10540 of 2018, this Court has granted similar relief to a student in Class XI. On perusal of the said decision, it is evident that the Petitioner in that case had made a request for conducting re-examination for three subjects so that if she passed the same, she would obtain the transfer certificate and join some other school and would not insist on continuing in same school. It was on account of those peculiar circumstances that such relief had been granted on consent of parties, but it would not be possible to infer that any general



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principle of law has been laid down creating an obligation on the school to conduct re-examination for those who failed in more than one subject when the rules do not permit the same.

9. A fervent plea is lastly made by the Learned Counsel for the Petitioners relying on the order dated 07.01.2022 in Writ Petition (Civil) No. 1214 of 2021 passed by the Hon'ble Supreme Court of India that a liberal approach would have to be adopted in assessment of marks of students obtained in examinations. The controversy that arose in the said case related to the stipulation that it was only the marks obtained by a candidate in the improvement examination that would have to be taken into account, and the marks secured in the original examination cannot be considered, even if it was higher. In that context, it was observed that such policy decision was manifestly arbitrary and irrational as it was without any justification and it was left to the option of the students to choose between the marks obtained in the original examination and the improvement examination. When



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the specific rule is that a candidate has to pass the examination in all subjects in Class XI in order to be promoted to be Class XII, we are unable to see how the said dictum could have any application to the facts of the present case.

10. It is needless to add here that the conclusions arrived in this order shall not preclude the concerned authorities to take any independent decision as they may deem fit in accordance with law on the representations said to have been made to re-visit the course of action followed when the proportion of students who have failed is reportedly on the higher side.

In the upshot, the common order dated 27.04.2023 passed in W.P. Nos. 13481, 11590, 12971, 12977, 12979, 12981, 12982 and 12985 of 2023 is set aside, and those Writ Petitions shall stand dismissed. The Writ Appeals are allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(S.V.G., CJ.) (P.D.A., J.)  
25.07.2023



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Maya  
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Index : Yes/No

NCS : Yes/No



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To  
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1. The Deputy Commissioner  
Kendriya Vidyalaya Sangathan  
IIT Campus, Chennai – 600036.
2. The Principal  
Kendriya Vidyalaya Sangathan  
Dr. Natesan Salai, Ashok Nagar  
Chennai – 600083.



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VERDICTUM.IN



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THE HON'BLE CHIEF JUSTICE  
AND  
P.D.AUDIKEVALU, J.

*Maya*

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Reserved on : 12.07.2023

Pronounced on : 25.07.2023